



## VILLAGE OF MARVIN

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### PLANNING BOARD MEETING MINUTES

February 26, 2019 6:30 pm – Village Hall  
REVISED

#### AGENDA ITEM

##### 1. Call to Order

Chairman Jones called the meeting to order at 6:33 pm.

##### 2. Determine Quorum

The Clerk verified that a quorum was present.

**Board Members present:** John Jones, Mark Petersen, Kelly Cates, Michael Lavelle, and Paul Cappiello

**Board Members absent:** Tom Traub

##### Staff Present:

Christina Alphin – Administrator

Rohit Ammanamanchi – Senior Planner

Barbie Blackwell - Clerk

##### 3. Adoption of the Agenda

**ACTION:** Mark Peterson made motion to adopt the agenda as presented.

##### 4. Adoption of the Meeting Minutes: January 15, 2019

**ACTION:** Kelly Cates made a motion to adopt minutes as presented.

##### 5. Public Comment Period

No one signed up to speak.

#### NEW BUSINESS ITEMS

##### A. Discussion of Conservation Subdivision:

The Planning Board discussed the Conservation Subdivision in depth. Rohit Ammanamanchi reported that the Conservation Subdivision concept existed in Marvin's Code of Ordinance through the Zoning Chapter §151.081 Standards for Developments Located in Large Tract Subdivisions with Board Members to obtain interest from the public on developing a Conservation Subdivision through the Resident Survey. *(See attachment #1: §151.081 Standards for Developments Located in Large Tract Subdivisions is hereby incorporated as reference into these minutes.)*

**B. Discussion of the process for Variances and Conditional Use Permits (CUPs):**

Ms. Christina Alphin, Village Administrator gave back ground information on use of the CUPs process. Currently, Marvin uses a CUPs for swimming pools that are located in the side or rear yard and abuts a neighbor's side yard but should be handled as a Variance. She stated that the process for pools was redundant and should be pulled out of the ordinance.

Mr. Ammanamanchi explained the differences between the Variance and CUP. He stated that CUPs was outlined in the Marvin ordinances as another way for individuals to use their property but a Variance the individual has to prove a hardship environmentally that is out of their control to be exempt from the rules.

The Planning Board discussed the process in depth.

**C. Discussion of proposed text amendments regarding pools and Conditional Use Permits:**

Ms. Christina Alphin presented the staff report with Attorney review of the recommended changes to remove the CUP process from the text amendment ordinance OR-2019-02-03. *(See attachment #2: The staff report is hereby incorporated as reference into these minutes.)*

The Planning Board discussed the text amendments for pools and CUPs in depth.

**ACTION:** The Planning Board agreed not to change the ordinance.

**D. Discussion of CUP #19-12227 for a pool to be located in rear yard where it abuts a neighbor's side yard**

The Planning Board reviewed the staff report and discussed the CUP #19-12227 for a pool to be located in rear yard where it abuts a neighbor's side yard in depth. *(See attachment #2: The staff report is hereby incorporated as reference into these minutes.)* Planning Board Members recommended approval with a condition that the applicant follow the 90-percent screening requirement in the Marvin Code of Ordinance.

**ACTION:** Mark Peterson made a motion to approve CUP #19-12227 with the conditions that the applicant follow the 90-percent screening required by the Marvin Code of Ordinance. The motion passed with unanimous consent.

**UNFINISHED BUSINESS ITEMS**

**A. Discussion and Consideration of Chapter 5 of the Land Use Plan**

**ACTION:** The Planning Board agreed to table this item until their next meeting.

**B. Discussion and Consideration of the Resident Survey Revisions including additional question and Timeline**

The Planning Board review the revisions that staff recommended for the Resident Survey in depth.

Staff will make the revisions discussed at the meeting and provide a revised copy for Planning Board Members to review at their next meeting.

**AGENDA ITEMS**

**A. Review of Action Items**

- Barbie will check the ordinance index to determine rather the ICD was amended.
- Kelly Cates requested to see the final survey revisions before it goes to Council.

**B. Board Member Comments**

Paul: He welcomed Rohit to his first meeting and that he did a great job. He told Rohit that he will fit in well with the group.

Mark: He welcomed Rohit. He stated that he was impressed of Rohit's knowledge and level of detail on the subject matter.

Kelly: Ditto

John: He welcomed Rohit. He stated that he jumped in feet first on learning the job.

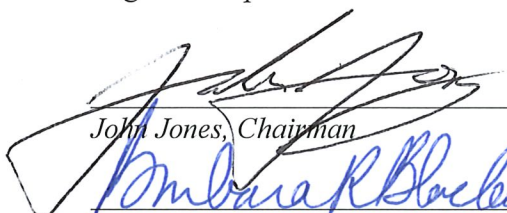
Michael: He welcomed Rohit.

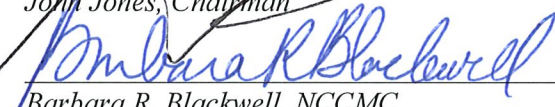
**ADJOURNMENT**

**ACTION:** Mark Peterson made a motion to adjourn the meeting at 8:58 p.m.

Adopted: \_\_\_\_\_

9.17.19

  
John Jones, Chairman

  
Barbara R. Blackwell, NCCMC  
Clerk, Village of Marvin



**§ 151.081 STANDARDS FOR DEVELOPMENTS LOCATED IN LARGE TRACT  
SUBDIVISIONS.**

(A) *Ownership.* When conservation land in a large tract subdivision is held in multiple ownership, it shall be planned and designed as a single entity for purposes of this chapter.



(B) *Density standards.*

(1) The number of lots designed for single-family residential uses in a large tract subdivision shall be computed by using the following formula:

Maximum Allowable Lots = (Gross Acreage of the Tract to be Subdivided) X [0.5521 + (0.00986 X the percentage of the tract designated for conservation land, as rounded up to the nearest whole number)]. This translates into a maximum density of approximately 86 lots per 100 gross acres
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(2) An example of this is as follows:

Assumption	The gross acreage of the lot is 50 acres
Assumption	10 of the 50 acres are to be preserved as conservation land (i.e., 20% of the gross area total)
Maximum number of lots = $50 \times [0.5521 + (0.00986 \times 20)] = 37$ residential lots	

(3) In computing this formula, a figure of no greater than 31% conservation land will be used. Thus, using the above example, no more than 15.5 acres (i.e., 31% of the total tract area) can be credited for calculating density.

(C) *Minimum required conservation land.*

(1) At least 15% of the gross area of the tract shall be permanently retained as conservation land.

(2) Note: Notwithstanding the above, the Village Council has the option of substituting a fee in lieu, which shall be held in a reserve account for purchase or development of recreation, park or open space sights that serve the needs of the residents of the subdivision or the immediate area as described in §§ 150.080 through 150.088 of the village subdivision regulations, for a portion of the required conservation land outside of the viewshed buffer. If the fee-in-lieu option is chosen by the Village Council, the amount of required conservation land may be reduced to below 15%.

(3) Furthermore, at least 15% of the gross area of the tract shall be in conservation land that are in common or public ownership (i.e., not located on privately held lots.) If the required viewshed buffer together with any additional conservation land on the tract comprise less than 15% of the tract area, except when the fee-in-lieu option is employed by the Village Council, the minimum lot size shall be 87,120 square feet.

(4) Certain portions of any tract being developed as a large tract subdivision shall be required to be included as conservation land. They include:

(a) Viewshed buffers;

(b) Tree preservation areas, including exterior perimeter preservation strips and interior preservation areas, as defined and referenced in §§ 93.06 and 93.22 of the village tree ordinance, as codified in Chapter 93, as amended;

(c) Floodplains;

(d) Wetlands;

(e) Lakes;

(f) Ponds;

(g) Lands proposed for greenways, as depicted in the most up-to-date adopted version of the village's Greenway Masterplan, as amended; and

(h) Hydric soils.

(5) Other areas that may be included as conservation land include:

(a) Viewsheds (other than viewshed buffers);

(b) Forestlands;

(c) Farmland; and

(d) Pastureland.

(D) *Dimensional standards.*

(1) *Minimum lot size.* If conservation land (aside from the required viewshed buffer) is provided, lots containing single-family dwellings shall have a minimum area of 30,000 square feet. Notwithstanding the above, up to 20% of the lots within the subdivision may have a minimum area of 25,000 square feet. The minimum lot size shall be 87,120 feet if the required viewshed buffer and all other conservation land on the tract comprise less than 15% of the gross tract area.

(2) *Maximum lot size.* None.

(3) *Minimum lot width at building line.* One hundred and thirty feet.

(4) *Minimum street frontage.* Thirty feet.

(5) *Yard regulations.*

(a) Variations in the principal building position and orientation on the lot are encouraged, but shall observe the following minimum standards.

<i>Yard</i>	<i>Regulation</i>
Front yard	50 feet
Rear yard	50 feet, except 75 feet shall be required if the rear yard abuts another lot*
Side yard	20 feet, except 30 feet on corner lots or if the side yard of a lot abuts the rear yard of another lot within the proposed development. Notwithstanding the forgoing, the side yard shall be 75 feet if the side yard of a lot abuts an existing lot outside the proposed development*
* In determining if a lot abuts another lot, any strip of land that is 50 feet or less shall be disregarded.	

(6) *Maximum building height.* Thirty-five feet. The finished grade along the front of the building shall be no greater than two feet above the highest adjacent grade prior to construction without prior approval by the village.

(7) *Garages.* Garages with front loading bays shall be recessed a minimum of two feet from the front facade of the house and visually designed to form a secondary building volume.

(8) *Maximum residential density within a large tract subdivision.* See division (B) above.

(E) *Viewshed buffers.*

(1) *Location and required minimum depth.*

(a) The minimum depth of the viewshed buffer, as measured from the edge of the major or minor road right-of-way shall be 85 feet. The maximum depth of the required viewshed buffer shall be 285 feet along major roads (viewshed buffers along minor roads shall only be required to be 85 feet in depth.) In addition, for any large tract subdivision, viewshed buffers shall be required on both sides of minor or major roads, where the subdivision includes land on either side of the road. The viewshed buffer shall be substantially parallel to the adjoining major or minor road. Notwithstanding the above, in no case shall the required viewshed buffer comprise greater than 30% of the tract to be subdivided. The Village Council, in approving a sketch plan in accordance with § 150.135 of the village subdivision regulations, shall have the authority to reduce the required depth of the viewshed buffer in instances where the viewshed buffer consists of an opaque buffer (see definition in § 151.016) and where the Village Council determines that the buffer would serve in an equal capacity in promoting the stated goals of the R District and retaining rural vistas along major roads in the village as would the normally required viewshed buffer. Furthermore, the Village Council shall have the authority to reduce the viewshed buffer, where it determines the required viewshed buffer will impose a substantial hardship on the property owner due to the unique physical constraints of the property. In no case shall the Village Council have the authority to reduce the depth of the viewshed buffer to below 85 feet.

(b) 1. Except as provided in division (F) below, all principal dwelling units and accessory structures shall be located outside the viewshed buffer.

2. Internal roads, other than alleys, substantially parallel with the adjoining major or minor road that are located within the subdivision may be allowed within the required viewshed buffer so long as they are located at least 85 feet back from the adjoining major or minor road right-of-way.

3. Alleys shall not be allowed in the viewshed or viewshed buffer.

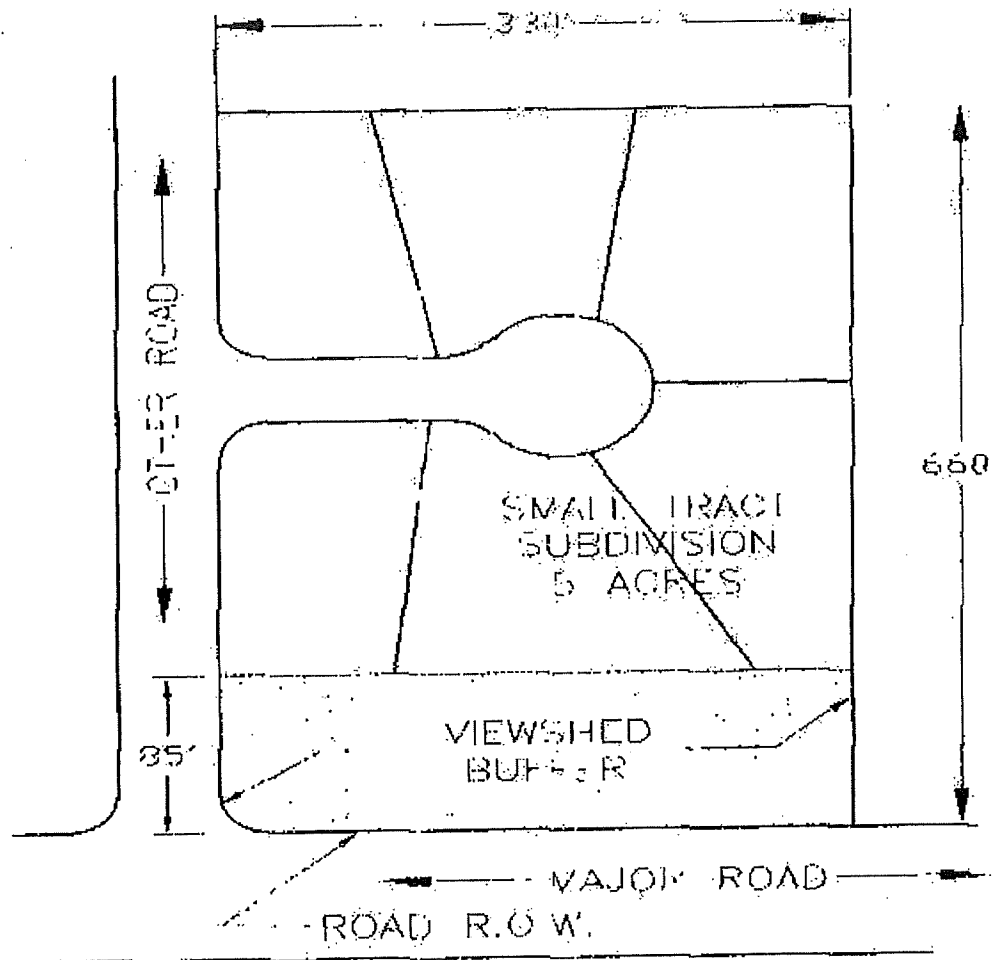
4. Except as provided in division (G)(13) herein, a berm may not be located within a viewshed buffer.

(c) 1. No party(ies) may privately own required viewshed buffer lands unless the portion of the required viewshed buffer that they own is at least five acres in area or constitutes the entire viewshed buffer for that subdivision along a major or minor road.

2. If a portion of the viewshed buffer is located on private property, necessary conservation easements shall be required that prohibit development within the area.



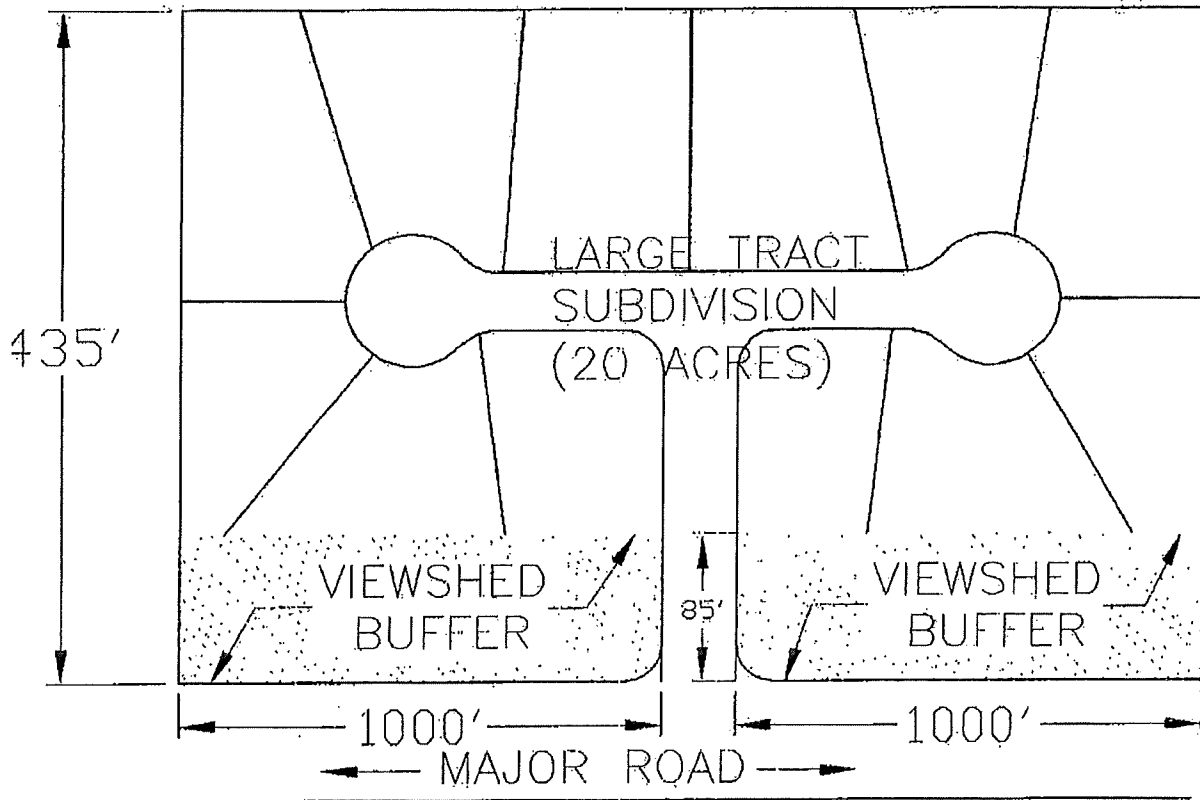
(d) Examples of these requirements are depicted in Illustrations 4 through 7:



- 5 ACRE TRACT (330'X660')
- VIEWSHED BUFFER = 85'X330' = 28,050 SF
- $28,050 / 217,800 = 12.9\%$  OF TRACT AREA
- THUS, REQUIRED MIN. VIEWSHED BUFFER IS LESS THAN 30% OF TRACT AREA.

DRAWING NOT TO SCALE.

Illustration 4



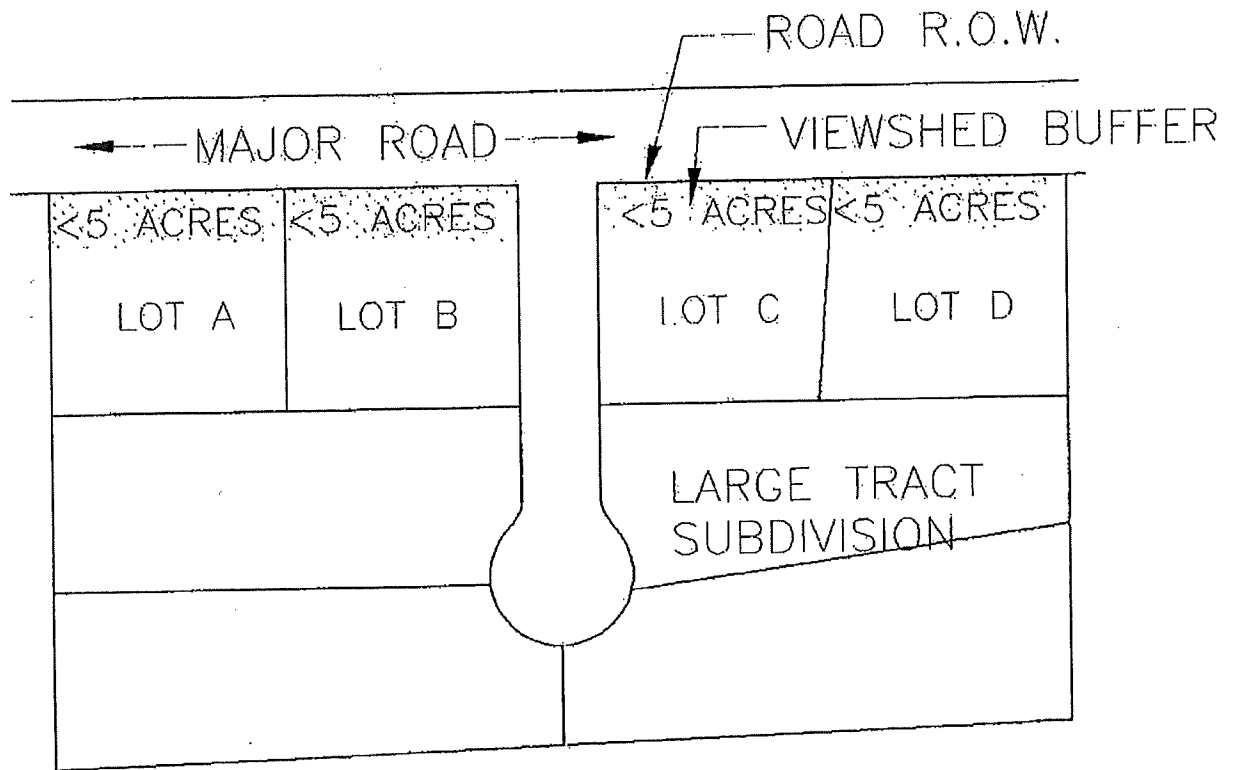
20 ACRE TRACT (2000'X435')

VIEWSHED BUFFER = 85'x2000' = 170,000 SF

$170,000 / 871,200 = 19.5\%$  OF TRACT AREA

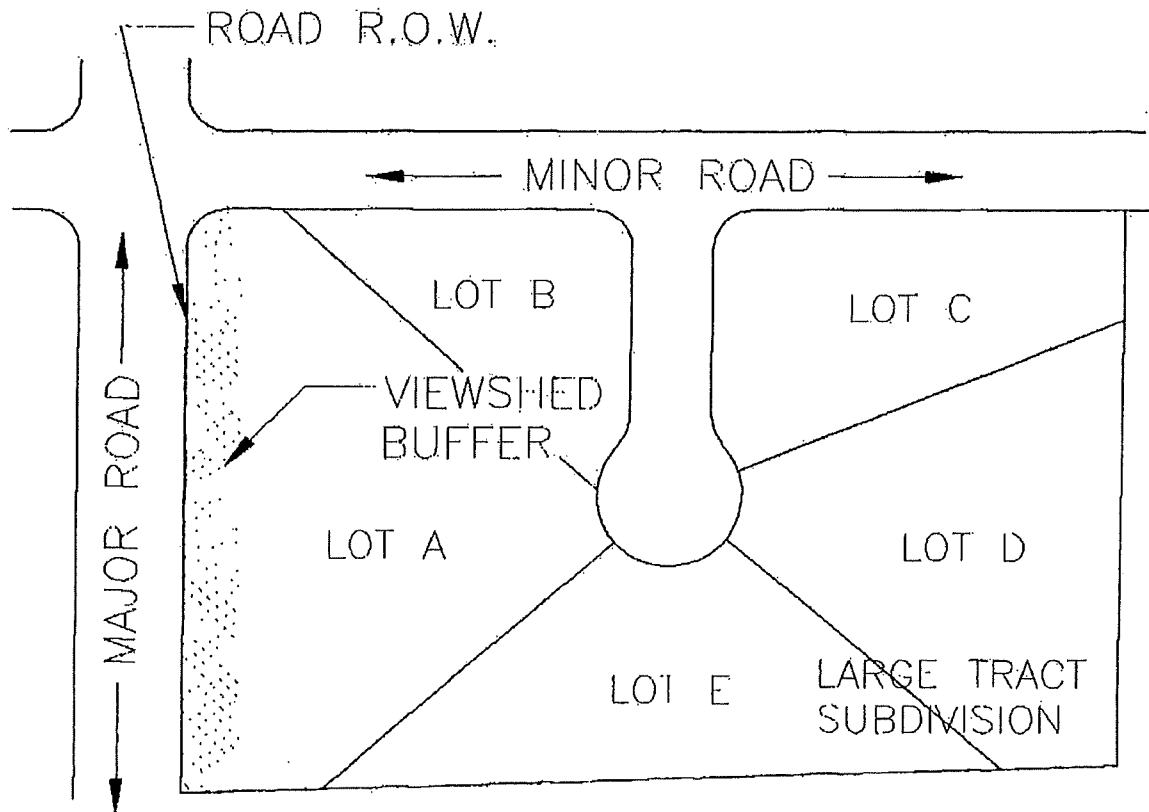
THUS, REQUIRED MIN. VIEWSHED BUFFER  
IS LESS THAN 30% OF TRACT AREA.

**Illustration 5**



NOT IN COMPLIANCE — PRIVATELY OWNED VIEWSHED AREA ON EACH LOT LESS THAN 5 ACRES

Illustration 6



IN COMPLIANCE — ALL OF THE REQUIRED  
VIEWSHED BUFFER IS IN SINGLE OWNERSHIP

**Illustration 7**

(e) The actual depth of the required viewshed buffer shall be determined by:

1. The area of the tract to be subdivided; and
2. Whether the tract fronts on more than one major road. The following formulae shall be used to determine required viewshed buffer depth.



(2) *If the tract borders one major road (only).* If the tract borders one major road, that road being a classified major road, the following formula shall be used:

(a) The required minimum depth of the viewshed buffer shall be a function of the area of the tract to be subdivided.

(b) The formula for determining the actual viewshed buffer depth shall be as follows:

$$\text{Viewshed Buffer Depth (feet)} = 80 + (5 \times \text{total lot or tract area})$$

a. *Example 1.* If a tract were to be subdivided that had an area of 25 acres (i.e., 1,000 feet of frontage along major road x 1,089 foot tract depth), the minimum viewshed buffer depth for each lot within the subdivision would be 220 feet or  $[80 + (5 \times 25) = 205]$ . This is less than the 30% viewshed buffer maximum.

b. *Example 2.* If a tract were to be subdivided that had an area of 100 acres (i.e., 1,500 feet of major road frontage x 2,904 foot tract depth), the minimum viewshed buffer depth for each lot within the subdivision would be 285 feet as  $[80 + (5 \times 100) = 580]$ . As 580 feet exceeds 285 feet, the maximum viewshed buffer required on any lot within the subdivision would be 285 feet. This is less than 30% viewshed maximum buffer.

(3) *If the tract borders two major roads.* If the exterior of the subdivision abuts two major roads, the full viewshed buffer width shall be placed along the road with the greater length. The depth of the viewshed buffer along the shorter road shall be two-thirds the depth of the normally required depth of the viewshed buffer. In no case shall the depth of the viewshed buffer along either road be less than 85 feet as measured from the edge of the street right-of-way. The maximum required depth of the viewshed buffer along either road shall be 285 feet. Furthermore, in no case shall the required viewshed buffer constitute more than 30% of the area of the tract to be subdivided.

(4) *If the tract borders one major road and one minor road.* The applicant shall use the formula cited above  $[\text{Viewshed Buffer Depth (feet)} = 80 + (5 \times \text{total lot or tract area})]$  to determine the minimum required viewshed buffer along the major road. In no case shall the depth of the required viewshed buffer on the major road be less than 85 feet as measured from the edge of the right-of-way. The maximum required depth of the viewshed buffer on the major road shall be 285 feet. The required depth of the viewshed buffer on the minor road shall be 85 feet. In no instance shall the area of the combined total of the required viewshed buffer exceed 30% of the area of the tract to be subdivided.

(5) *If the tract borders one major road and any other road (i.e., a road not herein defined as a "major road" or a "minor road").* The applicant shall use the formula cited above  $[\text{Viewshed Buffer Depth (feet)} = 80 + (5 \times \text{total lot or tract area})]$  to determine the minimum required viewshed buffer along the major road. In no case shall the depth of the required viewshed buffer on the major road be less than 85 feet as measured from the edge of the right-of-way. The maximum required depth of the viewshed buffer on the major road shall be 285 feet. Notwithstanding the above, in no instance shall the area of the required viewshed buffer exceed 30% of the area of the tract to be subdivided. A viewshed

buffer shall not be required along the second road (i.e., the non-major, non-minor road). In lieu, applicable front, side and/or rear setbacks shall be observed.

(6) *Tract area.* Tract area shall be determined using the acreage of the tract in question at the time this amendment was adopted (October 19, 2004) for any of the formulae shown above. A property owner shall not be allowed to circumvent this requirement by an intentional or unintentional subdivision of land in order to reduce the required minimum viewshed buffer width.

(F) *Design standards.*

(1) Each building lot within the large tract subdivision must share at least one lot line with another lot in the subdivision.

(2) (a) In the absence of a berm:

1. If a residential structure is visible from a major or minor road that abuts the periphery of the large tract subdivision, the architectural front of the structure shall be visible from the major road; and

2. If a lot fronts two major roads, and the ground floor of the structure is substantially visible from both major roads, the architectural front shall only be required to face the major road containing the road with the narrower viewshed buffer.

(b) These architectural front requirements shall be waived if a berm is placed in the viewshed or viewshed buffer and is built in accordance with the regulations contained in division (G)(13) herein.

(3) Other than the required viewshed buffer, conservation lands (other than viewsheds) shall be at least 75 feet in width. Exceptions may be granted for natural features used as conservation land (i.e., ponds, lakes, floodplains and the like) that have natural widths of less than 75 feet. Pocket parks, as well as exterior perimeter preservation strips and interior preservation areas, as defined and referenced in §§ 93.06 and 93.22 of the village tree ordinance, as codified in Chapter 93, as amended, are also exempted from this requirement.

(4) Any lot that is less than 30,000 square feet in area shall abut conservation land on one or more sides of the lot. The abutting conservation land shall meet the following criteria.

(a) The abutting conservation land shall have a minimum continuous area of three acres.

(b) Where the conservation land abuts the lot in question, it must run the entire length of the shared lot line and have a depth perpendicular to that lot line of a minimum of 130 feet. Refer to the Illustration 8.

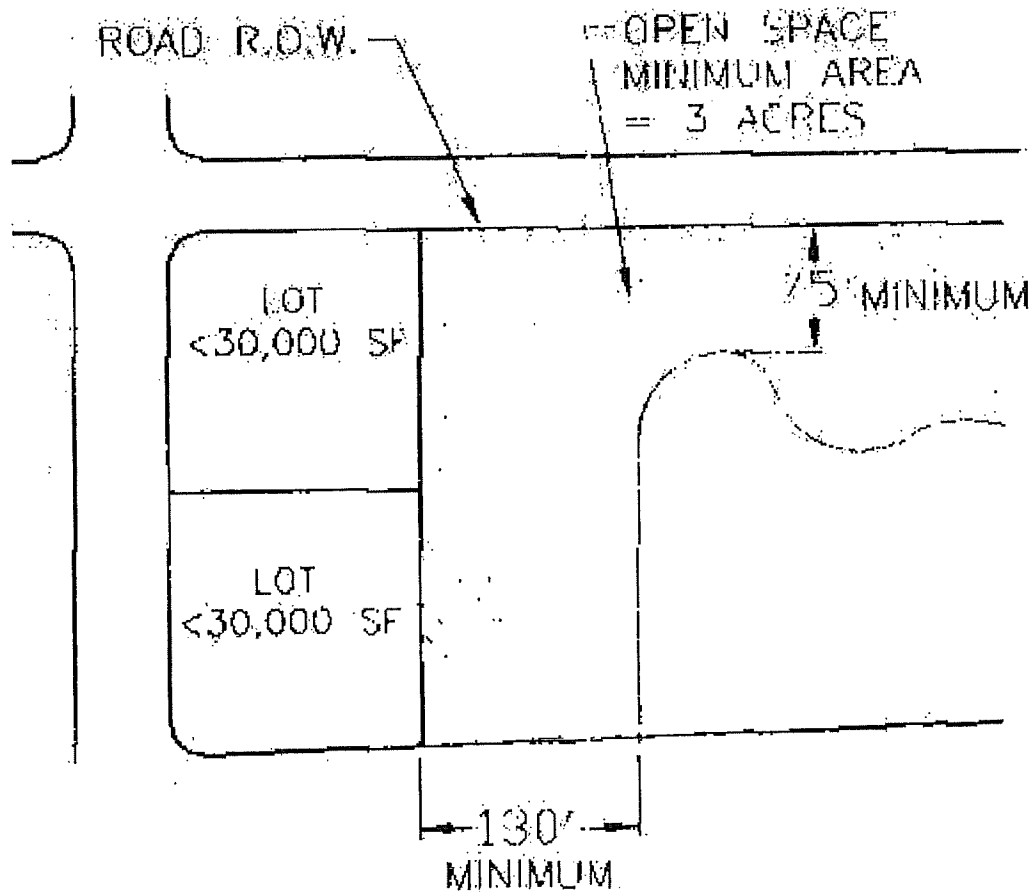


Illustration 8

(G) *Conservation land uses.* Except as provided herein, most types of structural development are not allowed on designated conservation land and/or viewsheds or viewshed buffers within a large tract subdivision. Uses allowed within designated conservation land, viewsheds and viewshed buffers are limited to the following:

- (1) Conservation of open land in its natural state (i.e., woodlands, fields or meadows);
- (2) Agricultural uses (see definition) including corrals. Notwithstanding the above, a new or expanded barn, stable or related agricultural building, may only be constructed in the conservation land subject to the issuance of a conditional use permit by the Village Council. The buildings shall be limited to those that are specifically needed to support an active, viable agricultural or horticultural operation,

and are architecturally compatible with the neighborhood setting. Specifically excluded, however, are any buildings associated with commercial livestock operations involving swine, poultry and mink;

(3) Pastureland for horses;

(4) Forestry, in keeping with established best management practices for selective harvesting and sustained yield forestry;

(5) Neighborhood uses such as village greens, pocket parks, commons, picnic areas, community gardens, trails and similar low-impact passive recreational uses;

(6) Noncommercial recreation area, such as playing fields, playgrounds, courts and bikeways, provided that the areas do not consume more than one-half of the minimum required conservation land or five acres, whichever is less. Parking facilities for the same, and parking provided to allow for public access to public greenways and parks located within the subdivision shall also be permitted. The same parking shall be of a paved or gravel surface, as determined by the Village Council, unlighted, properly drained and provide safe ingress and egress. The number of parking lots and location of the parking shall also be determined by the Village Council. Notwithstanding the above, no use or parking shall be allowed in the viewshed buffer, except for parking designed to provide for public access to public greenways and parks, provided that the parking, as determined by the Village Council, is consistent with allowing only for minimum intrusion into the viewshed buffer and that a minimum of 85 feet of the viewshed buffer, as measured from the edge of the viewshed buffer street right-of-way, must not be utilized for any parking whatsoever. The parking areas shall be adequately screened as determined by the Village Council;

(7) Water supply and sewage disposal systems, and stormwater detention areas designed, landscaped and available for use as an integral part of the conservation area;

(8) Easements for drainage, access, sewer or water lines or other public purposes;

(9) Underground utility rights-of-way;

(10) Internal streets, other than alleys, within the subdivision that are substantially parallel to the adjoining major or minor road may be located within the viewshed or viewshed buffer, provided they are located a minimum of 85 feet from the adjoining major or minor road right-of-way. The area included in the streets (including street right-of-way) shall not be counted as conservation land;

(11) Sidewalks, walking or equestrian trails and greenways may be located in the viewshed or viewshed buffer;

(12) Lakes and ponds;

(13) Berms, provided they meet the following standards (refer to Illustration 9):



(a) The external portion of the berm (as viewed from the edge of the major or minor road right-of-way) shall be located at least 200 feet from the closest edge of right-of-way from any adjacent major or minor road;

(b) The berm is placed substantially parallel to the adjacent major or minor road;

(c) The berm is located at the outer edge of the viewshed or viewshed buffer;

(d) The berm meets the following construction standards:

1. An earthen berm may be used in conjunction with planted vegetation provided that the berm have a minimum height of two feet, a minimum crown width of eight feet and a side slope with a width to height ratio of no greater than three to one if the berm is four feet or less in height. Berms shall not exceed eight feet in height and, if greater than four feet in height, shall have a minimum crown width of eight feet and a side slope with a width to height ratio of no greater than four to one. Berm height shall be measured from the lowest grade to the top of the crown. At least 80% of the linear length of the berm shall be a minimum of four feet in height. The Zoning Administrator may make exceptions to the maximum or minimum height of berms where, in his or her opinion, topographic features dictate the exceptions;

2. The berm shall be constructed of compacted earth and be designed and contracted with an undulating appearance that mimics, to the greatest degree practicable, the natural topographic features of the site;

3. The berm shall be designed to prevent standing water and to not impede the flow of stormwater from adjacent properties;

4. Any berm shall be substantially planted and covered with live vegetation. No berm shall be vegetated entirely with turf grass or ground cover;

5. Berms are not permitted where installation will destroy or damage trees that otherwise would be required to be maintained by the provisions of this chapter or the village tree ordinance, as codified in Chapter 93;

6. Berms shall be planted with vegetative materials to produce an opaque screen along both the roadside and rear bases of the berm. Intermittent plantings of deciduous and evergreen trees shall be made so as to produce, upon tree maturity, an opaque buffer to a minimum height of 35 feet. Evergreen trees at the time of planting shall be fully branched and shall be a minimum of five feet in height. Deciduous trees at the time of planting shall have a minimum caliper of two inches and shall be a minimum of eight feet in height; and

7. Plantings on the crown of the berm shall be of evergreen shrubs that have a height, at planting, of six to 15 feet. The combination of the berm and shrubs shall produce a buffer that is 95% or more opaque at a height of at least 12 feet within six years of planting.

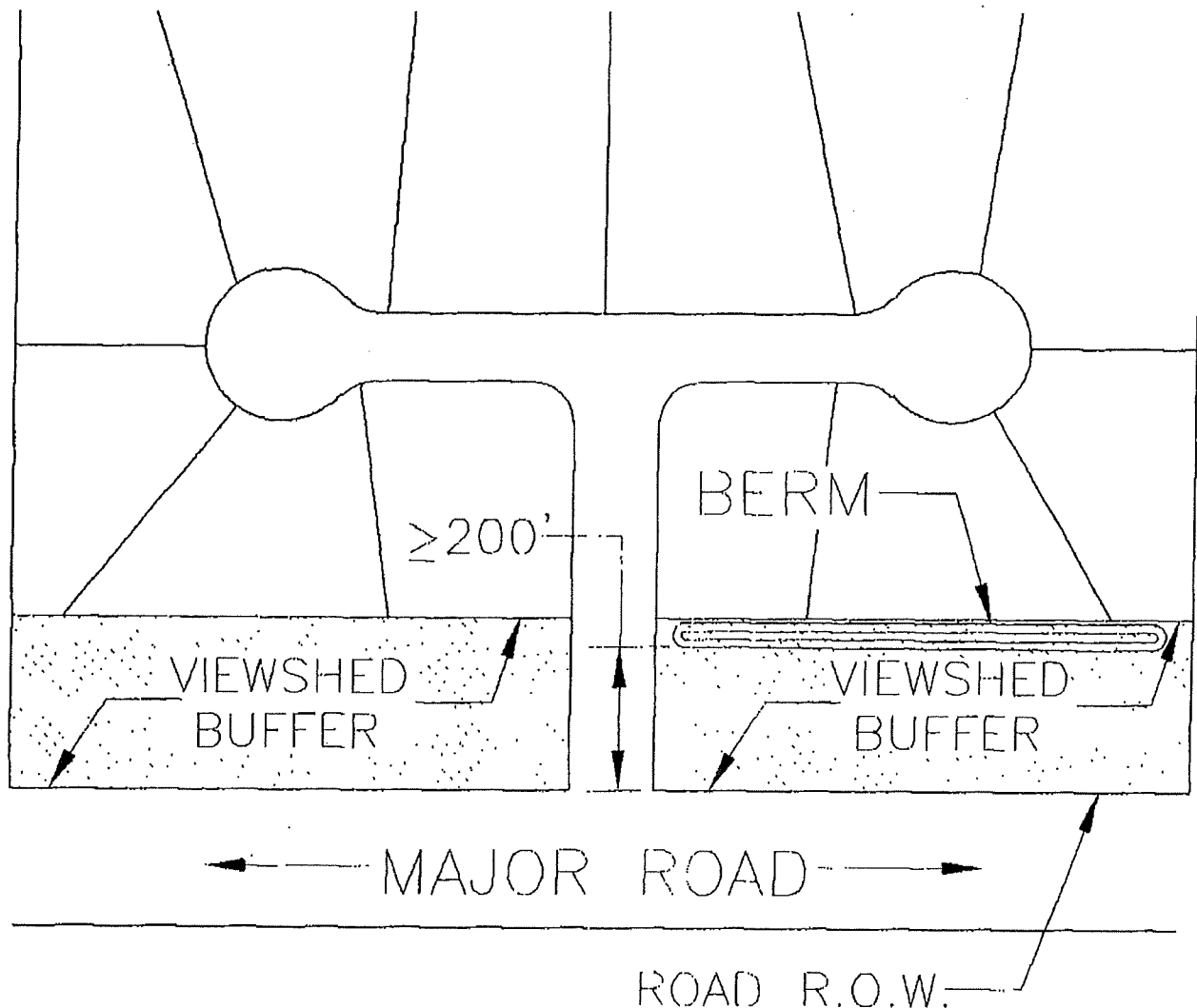


Illustration 9

(H) *Subdivision entrance walls.* Subdivision entrance walls as permitted per § 151.047(C) of this chapter.

(I) *Permanent conservation land protection through conservation easements.*

(1) Subject to the provisions of divisions (I)(1)(b) and (I)(1)(c) below, conservation land contained in the large tract subdivision may be retained by the applicant or may be conveyed to another party, including a homeowners' association, but must be and remain subject to a conservation easement. Private ownership of conservation land shall be prohibited except for:

(a) Viewshed buffers that are five acres or greater, as indicated in the division (E)(1) above, constitute the entire viewshed buffer for that subdivision along a major or minor road, and are owned by one party;

(b) Exterior and interior perimeter preservation strips not located within a viewshed buffer, as indicated in division (E)(1) above; and

(c) Irrespective of ownership, all conservation land shall be subject to a conservation easement as herein provided.

(2) Conservation land shall be subject to a conservation easement that specifies the range of uses allowable pursuant to division (G) above, and which are enforceable in accordance with all applicable laws of the state. There shall be at least two holders of every easement, except as provided in division (I)(3) below. The holders of the conservation easement shall be the state or appropriate department or agency thereof, or one or more conservation organizations, in any combination of two or more, except as provided in division (I)(3) below. Enforcement of the terms of the conservation easement shall be in accordance with applicable state law. The proposed sketch plan shall indicate that required conservation lands are subject to a conservation easement being conveyed to specific entities pursuant to this section.

(3) (a) Upon demonstration by the applicant that efforts to comply with division (I)(2) above have been exhausted and pursued in good faith, but have failed to result in the execution of a valid conservation easement by two qualified holders, the applicant shall enter into either:

1. A conservation easement to be held by the state or appropriate department or agency thereof;
2. Held by a conservation organization approved by the Village Council, if the state will not agree to be the conservation easement holder;
3. Held by a homeowners' association, subject to division (I)(4) below; or
4. Other appropriate easement holder approved within the discretion of the Village Council.

(b) To the extent possible, any combination of two or more of the above listed easement holder is preferable.

(4) Any homeowners' association that is a holder of a conservation easement as provided in division (I)(3) above, shall be subject to and comply with all applicable requirements for homeowners' associations as governed by local, state or federal law. In addition, the following criteria shall be met:

(a) The applicant for large tract subdivision approval shall provide the village a description of the organization of the proposed association, including its articles of incorporation, by-laws, and all documents governing ownership, maintenance and use restrictions for common facilities;

(b) The proposed homeowners' association shall be established by the large tract subdivision applicant and shall be operating (with financial underwriting by the applicant, if necessary) before the sale of any dwelling units in the development;

(c) Membership in the homeowners' association shall be mandatory for all purchasers of lots within the large tract subdivision and their successors in title;

(d) The homeowners' association by-laws shall confer legal authority on the association to place a lien on the real property of any member who falls delinquent in his or her dues. The dues shall be paid with the accrued interest before the lien may be lifted;

(e) The homeowners' association shall annually provide to the village a listing of the names, addresses and telephone numbers of all their officers and board members; and

(f) Any proposed changes to the conservation easement that affect the usage, location or maintenance of conservation land within the large tract subdivision must first be consented to and approved by the Village Council.

(J) *Maintenance plans and maintenance agreement.*

(1) The cost and responsibility of maintaining required conservation land and associated common facilities shall be borne by the fee simple owner of the required conservation land, or by another party as specified in an executed, binding and enforceable maintenance agreement, who is a holder of the conservation easement.

(2) The applicant must submit, with an application for sketch plan approval, a maintenance agreement that obligates either the property owner of the conservation land or other specified party as provided above, to implement the maintenance plan.

(3) The maintenance plan shall be submitted with an application for sketch plan approval of a large tract subdivision, and shall be in accordance with the following requirements:

(a) The maintenance plan shall specify ownership of required conservation land;

(b) The maintenance plan shall establish a regular operation and maintenance program appropriate to the uses to be undertaken on the subject conservation land, pursuant to division (G) above of this section;

(c) The maintenance plan shall specify required insurance and all maintenance and operating costs, and shall define the means for funding the maintenance plan on an on-going basis. The funding plan shall include the means for funding long-term capital improvements as well as regular yearly operating and maintenance costs;

(d) The property owner or other specified party as provided above shall be required to escrow or bond sufficient funds for the maintenance and operation costs of the conservation land for two years. The amount of the escrow or bond shall be equal to one and one-half of the bi-annual estimated maintenance and operational costs, and shall be in a form as provided in § 150.081 of the village subdivision regulations;



(e) Any changes to the maintenance plan shall be approved by the Village Council;

(f) In the event that conservation land and associated common facilities are not maintained in accordance with the approved funds to be used for the maintenance any development permits and approvals may be revoked or suspended by the Village Council; and

(g) The property owner of the conservation land and, if utilized, any other maintaining party by agreement, shall execute a release and indemnity of the village, in a form satisfactory to the village, for any claims or damages arising from the maintenance agreement and maintenance plan or performance thereof.

(Ord. OR-1996-02-01, passed 2-13-1996; Ord. passed 8-8-2006; Ord. passed 9-11-2007; Ord. passed 2-12-2008; Ord. passed 4-8-2008; Ord. OR-2013-12-02, passed 3-11-2014; Ord. OR-2015-02-01, passed 3-10-2015; Ord. OR-2015-10-03, passed 10-29-2015)



# VILLAGE OF MARVIN

10004 New Town Road | Marvin, NC | 28173 | Tel: (704) 843-1680 | Fax: (704) 843-1660 | [www.marvinnc.org](http://www.marvinnc.org)

**TO:** Planning Board  
**FROM:** Kelley Moore, Zoning Administrator  
**SUBJECT:** Text Amendment Regarding Pools and CUPs  
**DATE:** February 14, 2019

## **Background**

At this time, in order for a resident to build a pool in the side yard, or a rear yard that abuts a side yard, they must have at least 150 - 200 feet setbacks, or obtain a Conditional Use Permit (CUP). However, the more recently adopted landscaping code (§ 151.046) provides screening requirements that shield the pool from public view. As per § 151.046(K)(1), all pools must be screened with at least one method of screening outlined in § 151.046(J). These screening regulations obviate the need for the large setback requirements or the CUP Process for pools that are located in rear yards that abut the neighbor's side yard.

## **Current**

Staff is proposing a Text Amendment to eliminate the CUP Process for pools located in side yards and pools. Attached are the proposed changes to the ordinance § 151.054 (E), titled "*Swimming pools.*"

## **Requested Action**

Consider recommendation to the Council.

**§ 151.054 ACCESSORY USES AND STRUCTURES.**

(E) *Swimming pools.*

(1) Swimming pools shall be located **d** in the rear yard **or side yard** and shall have the following setbacks:

Swimming pool, measured from water's edge	20 feet rear yard 20 feet side yard or the principal structure on the street side
Pool equipment	20 feet side and rear yard
Pool decking	15 feet rear yard 20 feet side yard or the principal structure on the street side
Pool houses, cabanas, and the like	See § <a href="#">151.054</a> (B)

~~(2) A swimming pool may be located in the side yard provided that the principal structure has a minimum 200 foot front setback and the pool will have a minimum 150 foot side yard setback. Swimming pools to be located in the side yard not meeting the setbacks described herein, shall be subject to a conditional use permit as provided for in § [151.100](#).~~

~~—(3) All swimming pools located on lots where a rear yard abuts a side yard of an adjacent lot shall be subject to a conditional use permit as provided for in § [151.100](#).~~

(4)(2) **Screening** Fencing for all swimming pools shall be subject to § 151.047(B)- § [151.046](#)(J).



OR-2019-02-03

AN ORDINANCE OF THE VILLAGE OF MARVIN, NORTH CAROLINA

AN ORDINANCE AMENDING CHAPTER 151 §151.054, REGULATION OF SIDE YARD SWIMMING POOL SETBACKS TO BE REPLACED WITH SCREENING REGULATIONS IN THE VILLAGE OF MARVIN, NORTH CAROLINA

**WHEREAS**, ordinance §151.046 (entitled "Landscaping, Screening, and Buffers") has been recently adopted and requires screening all swimming pools from the view of adjacent neighbors, common areas, and public right-of way; and

**WHEREAS**, the provision to apply for a conditional use permit as an exception when the pool is located in the side yard or a rear yard that abuts an adjacent side yard has been obviated by those screening requirements;

**NOW, THEREFORE, BE IT ORDAINED** by the Village Council for the Village of Marvin, North Carolina that:

Section 1. Title XV: LAND USAGE, Chapter 151.054 (E) entitled "Swimming Pools" of the Code of Ordinance of the Village of Marvin, North Carolina shall be rewritten and amended as follows:

**§ 151.054 ACCESSORY USES AND STRUCTURES.**

(E) *Swimming pools.*

(1) Swimming pools shall be located in the rear yard or side yard and shall have the following setbacks:

Swimming pool, measured from water's edge	20 feet rear yard 20 feet side yard or the principal structure on the street side
Pool equipment	20 feet side and rear yard
Pool decking	15 feet rear yard 20 feet side yard or the principal structure on the street side
Pool houses, cabanas, and the like	See § <u>151.054</u> (B)

(2) Screening for all swimming pools shall be subject to § 151.046(J).

(3) Fencing for all swimming pools shall be subject to §151.047(B).

Added per Attorney

## Village of Marvin North Carolina

**DATE:** February 21, 2019

**TO:** Chairperson and Planning Board

**FROM:** Kelley Moore, Zoning Administrator

**SUBJECT:** The Planning Board is requested to review Conditional Use Permit #19-12227 to allow an inground swimming pool to be located in the rear yard of a residential lot that is adjacent to the side yard of another residential lot.

### Actions Requested by the Planning Board

The applicant's property is located at 8615 Prince Valiant Drive in Marvin, NC and is zoned R-Marvin Residential. The residence is located in the Valhalla Farms subdivision. The surrounding properties are zoned R-Marvin Residential.

The applicant is proposing to construct a 30'x 42' inground swimming pool with a 7'x 7' raised spa to be located in the rear yard per the Marvin Zoning Ordinance. However, a Conditional Use Permit (CUP) is required when a pool is located in a lot where the rear yard abuts the side yard of an adjacent lot. The CUP is to be reviewed by the Planning Board and approved or denied by the Village Council. A Public Hearing is required before Village Council approval.

### Overview

A Conditional Use Permit is a process which allows the Planning Board and Village Council to review and approve specific uses that are in keeping with the intent and purpose of the zoning district but may have substantial impacts on the surrounding area. This process allows conditions or restrictions to be placed on an approval that would minimize impacts to the surrounding area.

Swimming pools are an accessory use allowed in the R-Marvin Residential District, provided that the pool is located in the rear yard and the following setback requirements are met:

Swimming pool, measured from water's edge	20 feet rear yard 20 feet side yard or the principal structure on the street side
Pool Equipment	20 feet side and rear yard
Pool Decking	15 feet rear yard 20 feet side yard or the principal structure on the street side
Pool houses, cabanas, and the like	See §151.054 (B)

*All swimming pools located on lots where a rear yard abuts a side yard of an adjacent lot shall be subject to a conditional use permit as provided for in § 151.100.*

The proposed pool complies with all setback requirements.

The proposed pool would not violate the intent of the R-Marvin Residential District nor would it significantly impact adjoining property owners. The pool is to be located approximately 180 feet from the rear property line. This lot is wooded and significant landscaping is proposed to sufficiently screens the side yard of the adjacent lot and will help to minimize sounds associated with the pool use.

### **Finding of Facts**

In consideration of the request for a Conditional Use Permit, the Village Council will need to make the following findings:

1. The use will not materially endanger the public health or safety if located where proposed and developed according to plan;
2. The use meets all required conditions and specifications;
3. The use will not substantially injure the value of adjoining or abutting property or the use is a public necessity;
4. The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with this chapter and the Village Land Use Plan; and
5. Additional review criteria, as stated in this chapter shall also be considered and addressed where required. *There are no additional review criteria for the proposed use.*

### **Recommendation**

The request is consistent with the intent of the Village of Marvin's Zoning Ordinance. Staff has identified no effects from the proposal which would result in a significant impact on adjoining properties; therefore, Staff recommends approval of CUP #19-12227, subject to the following conditions:

1. Fencing around the pool must comply with NC Residential Code;
2. Applicant will provide screening for pool and equipment that will comply with Marvin Code as outlined in 151.046 J.
3. All required setbacks will be met as outlined in application.

Attachments:  
Survey of Property  
Aerial Photography of Property  
Proposed Landscaping

RECEIVED  
FEB 21 2019



## VILLAGE OF MARVIN

10004 New Town Road Marvin, NC 28173 Tel: (704) 843-1680 Fax: (704) 843-1660 www.marvinnc.org

Pool Permit # 19-12216

### CONDITIONAL USE PERMIT APPLICATION

PAGE 1 OF 3

Application Number: 19-12227 Application Date: 2/21/2019

Applicant's Name: Edgewater Pools, LLC

Property Owner's Name: Maxam, J.R.

704-845-3065 704-575-0456 803-547-6434  
Applicant's phone Owner's phone FAX Mobile

Relationship of Applicant to Property Owner: Pool Builder/Contractor

Property Location: 8615 Prince Valiant Dr., Marvin NC 28173

Parcel Number: 06189076 Deed Book and page #: B-114A, 7200-464

Existing Zoning: R

Proposed Conditional Use: 30' x 42' Inground gunite swimming pool with  
7' x 7' raised spa, Retaining walls: 33' x 2'6" and 23' x 1'6"

A completed written application for a Conditional Use Permit shall be filed with the Zoning Administrator. The application, at a minimum, shall include the following required information:

1. A scaled boundary surveyed drawn to an appropriate scale prepared by and certified to be correct by a surveyor or engineer registered with the State of North Carolina, showing the total acreage, present zoning classification(s), date and north arrow. On this survey shall be sketched the information required in sections 3, 4, 5, 6, and 7.
2. The owners' names, addresses, and tax parcel numbers (as shown on the current year Union County Tax Records), and the uses and current zoning classifications of all adjacent properties.
3. All existing easements, reservations, rights-of-way and all yard requirements for the zoning district.
4. A site plan showing all existing and/or proposed buildings, storage areas, parking and access areas, proposed size, layout and setbacks of land and proposed structures, and proposed number, type, and location of signs. For residential uses this shall include the number of units and an outline of the area where the structures will be located. For nonresidential uses, this shall include the approximate square



footage of all structures and an outline of the area where the structures will be located.

5. Traffic, parking and circulation plans, showing the proposed locations and arrangement of parking spaces and access points to adjacent streets.
6. Landscape plan at the same scale as the site plan showing existing and proposed trees, ground cover and landscape material, proposed screening, including walls, fences or planted areas as well as treatment of any existing natural features.
7. Plans and elevations for all proposed structures.
8. Depending on the nature of the proposed conditional use, the Zoning Administrator (or the Planning Board or Village Council) may require that the following information be submitted in scaled form along with other required information:
  - a) Delineation of the areas within the floodplain as shown on the official flood hazard boundary maps.
  - b) Accurate mapping of all soil classifications found on the site and general depths thereof. The applicant shall use the same classifications used by the U.S. Department of Agriculture.
  - c) Existing and proposed topography at five (5) feet contour intervals.
  - d) Plans for providing potable water and for the treatment of wastewater.
9. Proposed phasing, if any, and approximate completion time of the project.
  - a) All applications shall be signed by the applicant and shall be submitted with any application fee required by the Village.
  - b) The Zoning Administrator shall present any properly completed application to the members of the Planning Board at least fifteen (15) days prior to their next regularly scheduled meeting. The Planning Board by majority vote may shorten or waive the time provided in the Article for receipt of a completed conditional use application.
  - c) The Planning Board shall have a maximum of thirty (30) days from the date at which it met or until its next regularly scheduled meeting, whichever is longer, to review the application and to submit its recommendation to the Village Council. If a recommendation is not made during said time period, the application shall be forwarded to the Village Council without a recommendation from the Planning Board.
  - d) When dealing with the Conditional Use Permit process, it may be desirable to request additional information in order to evaluate a proposed use and its relationship to the surrounding area. Therefore, the Planning Board and/or Village Council may request needed additional information as they deem necessary.
  - e) Once the application is forwarded to the Village Council from the Planning Board, the Village Council shall consider conducting a public hearing as prescribed in Article 12.1.7 (a public



hearing is required if CUP is to be approved). In the event the Village Council deems a public hearing appropriate, due notice of such public hearing shall be as prescribed in Article 12.1.7(A) and (B) of the Village of Marvin Zoning Ordinance.

- ☒ This completed application shall be submitted to the Zoning Administrator and shall not be considered complete unless accompanied by all required information and a fee in accordance with the current Fee Schedule adopted by the Village of Marvin. Please note: all fees for regulation approval in the Village of Marvin are non-refundable, and checks that are returned will be subject to a returned check fee in accordance with the current fee schedule adopted by the Village of Marvin.

To the best of my knowledge, all information herein submitted is accurate and complete.

James M. Ward  
Signature of Property Owner

2/21/19  
Date

[Signature]  
Signature of Applicant

2/21/19  
Date

All of the information herein required has been submitted by the applicant and is included or attached with this application.

\_\_\_\_\_  
Signature of Zoning Administrator

\_\_\_\_\_  
Date

***This section to be filled out by the Zoning Administrator***

1. Completed application submitted on 2/21/19
2. First reviewed by Planning Board on 2/26/19
3. Action by the Planning Board taken on \_\_\_\_\_
4. Action of the Planning Board: \_\_\_\_\_
5. First reviewed by Village Council on \_\_\_\_\_
6. Public Hearing held on \_\_\_\_\_
7. Notification posted on Village of Marvin bulletin board on \_\_\_\_\_
8. Publication notices filed in \_\_\_\_\_  
(name of newspaper)  
on \_\_\_\_\_ and \_\_\_\_\_  
(date of publication) (date of publication)
9. Action by the Village Council taken on: \_\_\_\_\_
10. Action of the Village Council: \_\_\_\_\_

## VICINITY MAP

n.t.s.

VALHALLA FARMS SUBDIVISION  
SECTION 1

## LEGEND

O	PROPERTY CORNER
(F)	FOUND
(S)	SET
#4b	No. 4 REBAR
#5b	No. 5 REBAR
CM	CONCRETE MONUMENT
NMFS	NO MONUMENT FOUND OR SET
R/W	RIGHT OF WAY
b/c	BACK OF CURB
P.D.E.	PUBLIC DRAINAGE EASEMENT
MAG	SURVEY NAIL

LOT 3

LOT 1

PRINCE VALIANT DRIVE  
60' PUBLIC R/W

PRELIMINARY PLAT

NOT FOR RECORDATION, CONVEYANCES, OR SALES

SUPERINTENDANT  
VERIFY ALL  
DIMENSIONS PRIOR  
TO CONSTRUCTION

REV. 1 08/31/18 CVP MOVED HOUSE

THIS PROPERTY MAY BE SUBJECT TO EASEMENTS AND/OR RIGHTS-OF-WAY EITHER RECORDED OR IMPLIED.

SCALE: 1" = 60'

## PLOT PLAN

ENVELOPE:

Lucas-Forman  
Incorporated

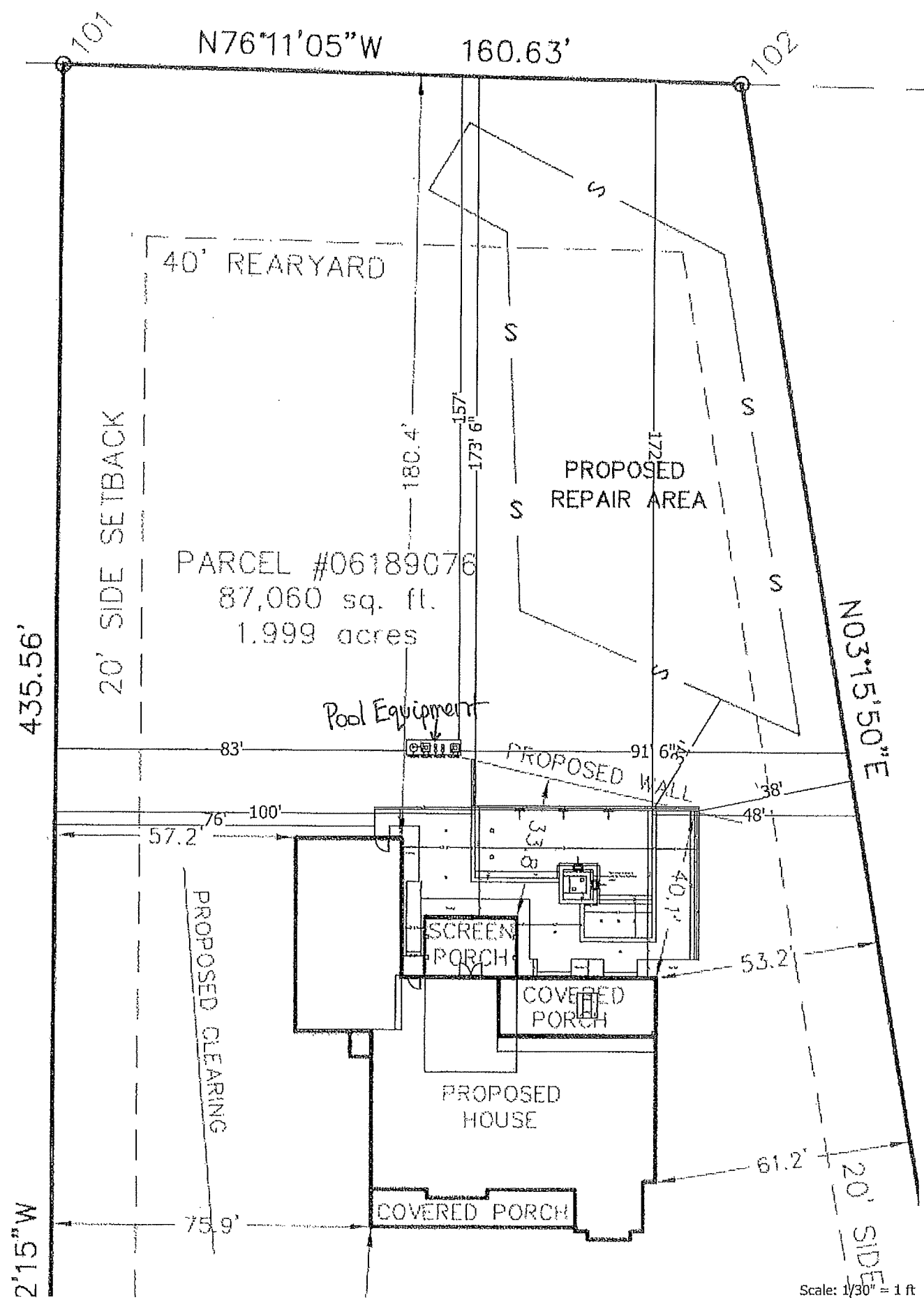
Land Surveying

8615 PRINCE VALIANT DRIVE  
SANDY RIDGE TOWNSHIP, UNION COUNTY, N.C.

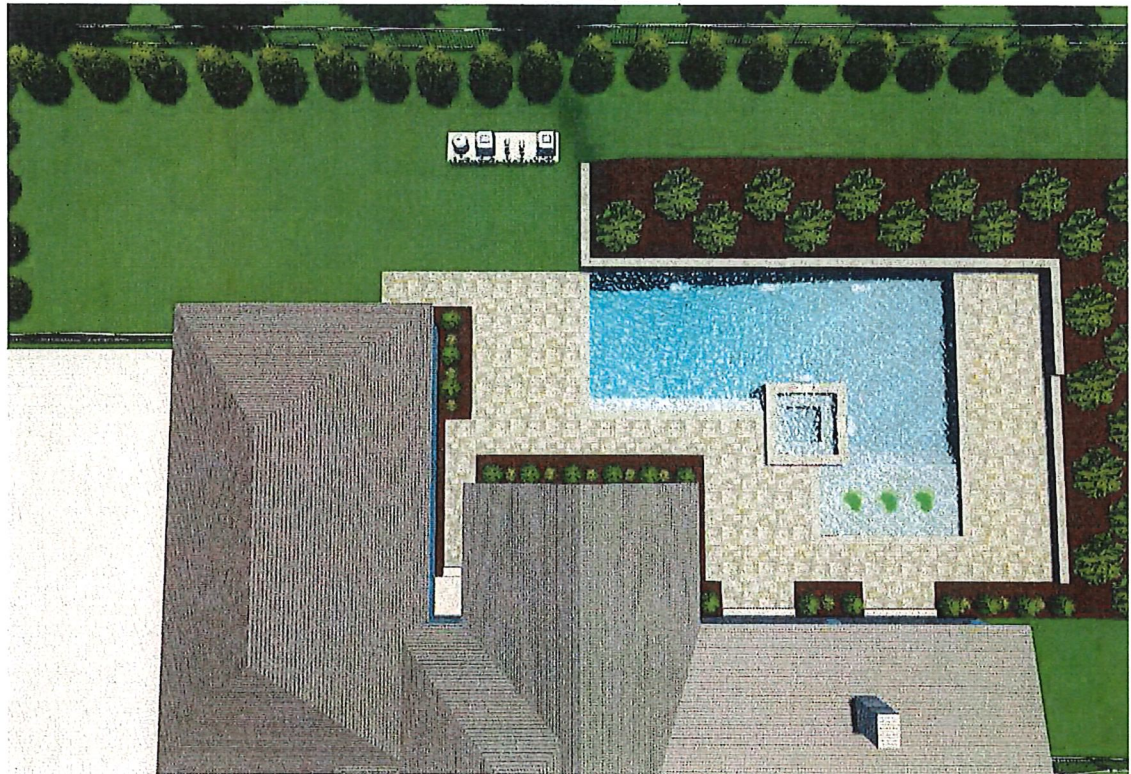
LOT 2 BLOCK MAPBOOK B PAGE 114A

Scale: 1/60" = 1 ft

Maxam project



90% coverage



80% covered

